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September 1, 2010

Via ECF and Overnight Mail

Honorable Arthur D. Spatt
United States Senior District Judge
Eastern District of New York
100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722-9014

Re: Eric Gunther v. Capital One, N. A.; No. 09-cv-2966-ADS-AKT

Your Honor:

I write on behalf of Capital One, N.A. ("Capital One"), the defendant in the matter in caption, to alert the Court to circumstances that have arisen since Your Honor entered the order preliminarily approving the class settlement.

After Your Honor entered the Order Granting Preliminary Approval to Proposed Class Settlement on July 20, 2010, notice was provided to approximately 40,000 class members. After the notice was mailed to the approximately 40,000 class members, Capital One discovered an anomaly in the class list it had generated for notice purposes. A further investigation leads Capital One to believe that approximately 3,000 persons who should have been included on the class list were not in fact included, and did not receive notice of the proposed class settlement.

In addition to the foregoing, and as a result of efforts to re-confirm the class data, Class Counsel have pointed out that Capital One's calculations respecting the number of instances in which individual accounts were charged undeliverable mail fees may be incorrect. The identified anomaly appears to have arisen because a small handful of days in March, 2008, were not included in the original calculation. Some individuals may have been charged one time more than originally indicated. This data would be relevant only if Capital One challenged any claims it believed were fraudulently submitted. Capital One is working to revise and confirm the accuracy of the data.

Capital One and counsel for the proposed class are in communication regarding these issues and are working diligently to craft a solution. The proposed solution will likely include a proposed amended Preliminary Approval Order and additional time to allow for notice to the additional class members, opt outs and objections. We anticipate proposing that the fairness



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hearing presently scheduled for September 28, 2010 be adjourned to accommodate the additional class members. And we anticipate filing appropriate papers with the court within the next week.

Should the court wish to discuss the foregoing in advance of receiving the proposed amended class settlement papers, counsel can be available at the Court's convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Otero", with a stylized flourish at the end.

Brian V. Otero

cc: Honorable A. Kathleen Tomlinson (via overnight mail)
Joseph P. Guglielmo, Esq. (via e-mail and overnight mail)
Joseph S. Tusa, Esq. (via e-mail and overnight mail)